



**41 CFR Part 102-74**

[FMR Case 2022-02; Docket No. GSA-FMR-2022-0011, Sequence No. 1]

**RIN 3090-AK54**

**Federal Management Regulation; Soliciting Union Memberships Among Contractors in GSA-controlled Buildings**

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is issuing a final rule amending the Federal Management Regulation (FMR) to revise the soliciting, vending, and debt collection policy. The rule will update policies consistent with the White House Task Force on Worker Organizing and Empowerment recommendations to revise the FMR. This rule will clarify that activities related to worker organizing and collective bargaining among contractors' employees working in Federal Government facilities are not covered or restricted by the general prohibition on soliciting, posting and distributing materials in or on Federal property under the jurisdiction, custody or control of GSA (GSA-controlled property).

**DATES:** *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

*Comment date:* Interested parties should submit written comments on or before [Insert date 60 days after date of

**publication in the *FEDERAL REGISTER***] to be considered in future rulemaking.

**ADDRESSES:** Submit comments in response to FMR case 2022-02 to: Regulations.gov at <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FMR Case 2022-02." Select the link "Comment Now" that corresponds with FMR Case 2022-02. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FMR Case 2022-02" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite FMR Case 2022-02, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Coneeney, Real Property Policy Director, at 202-208-2956, or at [chris.coneeney@gsa.gov](mailto:chris.coneeney@gsa.gov) for clarification of content. For information pertaining to status or publication schedules,

contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov*. Please cite FMR Case 2022-02.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

GSA is issuing a final rule with a 60-day comment period amending the Federal Management Regulation (FMR) to update certain provisions regarding Facility Management. These revisions will enable access to property under the direct custody and control of GSA, or property for which Federal agencies are acting under a delegation of authority from GSA, for union organizers with the intent to educate employees of private sector contractors working in these Federal Government facilities about the benefits of organizing, collective bargaining and union membership.

In 1935, in the middle of the Great Depression, Congress enacted the National Labor Relations Act, as amended, 29 U.S.C. 151-169 (NLRA), to protect the rights of workers to organize into trade unions and engage in collective bargaining and collective action. The NLRA was a landmark piece of legislation that sought to correct the “inequality of bargaining power between employees ... and employers ...” (29 U.S.C. 151) and promoted collective bargaining between trade unions on behalf of their members and the business entities that employed them.

In the decades that followed, Congress also enacted reforms to civil service, as the government grew in size

and complexity. These efforts resulted in the Civil Service Reform Act of 1978, as amended, Public Law 95-454 (October 13, 1978), 5 U.S.C. 1101 *et seq.* (CSRA), the most comprehensive civil service legislation in almost a century. These reforms included the Federal Service Labor-Management Relations Statute, which allowed Federal employees to form unions and engage in collective bargaining regarding personnel practices. Among many other provisions, this statute required Federal agencies to allow union organizers access to Federal property for the purpose of conducting union business, such as organizing, holding regular meetings and dispute settlement.

On April 26, 2021, President Biden issued Executive Order (E.O.) 14025, titled "Worker Organizing and Empowerment" (available at 86 FR 22829 (April 29, 2021); <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce/>), section 2 of which established a White House Task Force on Worker Organizing and Empowerment (Task Force) to identify executive branch policies, practices and programs that could be used, consistent with applicable law, to promote the Administration's policy of empowering workers to organize and successfully bargain with their employers. The Task Force recommended that GSA, in consultation with the Office of Management and Budget (OMB), consider revising

the FMR to allow that worker organizing and collective bargaining among employees of contractors working in Federal Government facilities are not covered or restricted by the general prohibition on soliciting, posting and distributing materials in GSA-controlled property. These recommendations are available at

<https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/02/OSEC20220195.pdf> on page 20.

GSA, in consultation with OMB, is updating the FMR on soliciting, vending and debt collection consistent with the Task Force recommendation. Specifically, GSA is updating the FMR to address the recommendation to include an exception to the prohibition on soliciting, posting or distributing materials, or seeking donations, on GSA-controlled property. The FMR currently contains a general prohibition on the activities of soliciting and posting and distributing materials on GSA-controlled property at 41 CFR 102-74.410 and 102-74.415, respectively. This prohibition only covers activities and does not set forth any restrictions or exemptions regarding the individuals performing those activities. The existing regulation provides six exceptions to the general prohibition in 41 CFR 102-74.410 concerning soliciting, vending and debt collection in or on Federal property, including one for the solicitation of labor organization membership or dues authorized by occupant agencies under the CSRA. This

exception authorizes union organizer access to Federal employees working in GSA-controlled property to educate Federal employees who either wish to organize or are already members of a union.

Requests by union organizers to meet with Federal contractor employees in space occupied by the legislative or judicial branches are beyond the scope of the order because executive orders do not apply to the legislative or judicial branches of the Federal Government.

This final rule will enable labor organizations who represent contractors working in Federal Government facilities to access Federal property to educate Federal contractors about the benefits of organizing, collective bargaining and union membership. If a security clearance is required for access to the Federal property, labor organizations will still have to follow the normal process of gaining access. This final rule also furthers the goals of E.O. 14035, "Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce." This E.O. reflects the goal of "cultivat[ing] a workforce that draws from the full diversity of the Nation," and directs agencies to identify strategies to promote diversity and equity while removing barriers to inclusion and success for employees in marginalized groups. Unions can provide greater protection for employees in marginalized groups as they advocate for employees and allow for collective bargaining on behalf of

marginalized employees who may not otherwise be comfortable with or able to do so on their own.

## **II. Discussion of the Final Rule**

### **A. Summary of Change.**

This final rule amends 41 CFR part 102-74 by adding a new paragraph to § 102-74.410. The section outlines the ban on soliciting contributions, vending goods, advertising, and debt collection on Federal property. The current FMR already provides an exception for union organizing activities for Federal employees; however, this rule will add union organizing activities for labor organizations representing or seeking to represent contractors working in GSA-controlled property to the list of authorized exceptions to the general prohibition. The addition of this new exception does not in and of itself create a direct employment relationship with the Federal Government nor does it replace or prohibit the implementation of current or future Federal agency or contractor policies regarding access to Federal property or the regulation of conduct in or on Federal property.

### **B. Expected costs and benefits.**

GSA has conducted an economic analysis of the proposed change and determined that the total predicted monetary costs to the Government and to the private sector are \$1,334,937 over the next 10 years. (For a full breakdown of compliance costs, see section VI of this rule.) The benefit

to the Federal agencies and Federal contractors may include no loss of productivity due to workers taking leave to attend labor organization or collective bargaining presentations or unscheduled meetings. Federal contractors' employees will also benefit from having easier access to union organizers and better opportunities for collective bargaining.

### **III. Request for Public Comment**

In addition to the changes discussed with this final rule, GSA requests public comments to better understand how the agency can promote the goals articulated in E.O. 14025, as well as providing opportunities for all employees to learn about and access unions should they deem it beneficial. These comments will inform possible policy formation in the future, as well as future Task Force projects.

### **IV. Administrative Procedure Act**

This rulemaking is exempt from the advance notice-and-comment and delayed-effective-date requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because this rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rulemaking relates to both GSA's agency management and public property, as it involves the internal process of managing conduct on public property by GSA and



Federal agencies acting under a delegation of authority from GSA.

#### **V. Executive Orders 12866 and 13563**

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, harmonizing rules and promoting flexibility. OMB's Office of Information and Regulatory Affairs has determined that this is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, "Regulatory Planning and Review," dated September 30, 1993.

#### **VI. Congressional Review Act**

The OMB Office of Information and Regulatory Affairs has determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(2). Additionally, this rule is excepted from Congressional Review Act reporting requirements prescribed under 5 U.S.C. 801 since it relates to agency management or personnel under 5 U.S.C. 804(3).

#### **VII. Regulatory Flexibility Act**

This final rule will not have a significant economic impact on a substantial number of small entities within the

meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it applies to agency management or personnel. Therefore, an initial regulatory flexibility analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities and other interested parties concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FMR Case 2022-02) in correspondence.

GSA determined, based on an economic model, that there will be compliance costs associated with the new rule. For the model, GSA assumed that compliance activities would need to take place in federally owned and leased buildings and buildings under construction. Compliance activities would consist of developing guidance around providing union organizer access to Federal facilities where employees of private sector contractors are working and distributing that guidance to building managers for their review. Below is a list of activities related to regulatory familiarization that GSA anticipates will occur.

#### **A. Government Costs**

##### **1. Federally Owned Buildings**

GSA calculates it will take 8 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 30 hours each in the first year to develop guidance informing the owned building community of the changes to union organizer access to Federal property. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$18,310 (= 8 x \$76.29 [GS-14, step 5 rate] x 30 hours)**.

Based on recent experience, GSA estimates that the guidance document will be updated about once every 10 years and the updated guidance will be redistributed to appropriate individuals. GSA calculates it will take 8 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 5 hours each once every 10 years to develop updates to the guidance informing the owned building community of the changes to union organizer access to Federal property. Therefore, GSA calculated the total annual estimated cost for year 10 for this part of the rule to be **\$3,052 (= 8 x \$76.29 [GS-14, step 5 rate] x 5 hours)**.

GSA calculates it will take 12 GSA employees, on average with a GS-15, step 5, with an average hourly rate of \$89.73/hour, 0.25 hours each to distribute the union organizer access guidance to the owned building community once every 10 years. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part

of the rule to be **\$269 (= 12 x \$89.73 [GS-15, step 5 rate] x 0.25 hours)**.

There are 893 GSA employees in the Building Manager, GS-1176, job series. GSA calculates it will take 893 GSA building managers, on average with a GS-13, step 5, with an average hourly rate of \$64.56/hour, 0.25 hours each to receive and review the initial and any updates to the union organizer access guidance, again estimated to be once every 10 years. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be **\$14,413 (= 893 x \$64.56 [GS-13, step 5 rate] x 0.25 hours)**.

## 2. Federally Leased Buildings

GSA calculates it will take 12 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 30 hours each in the first year to develop awareness communication at the headquarters level for occupant agencies on the change in the union organizer access policies. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$27,464 (= 12 x \$76.29 [GS-14, step 5 rate] x 30 hours)**.

GSA calculates it will take 12 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 5 hours once every 10 years to develop awareness communication at the headquarters level for occupant agencies on any updates to the union organizer

access policies. Therefore, based on the prior estimation of updates to the policies occurring once every decade, GSA calculated the total annual estimated cost for year 10 for this part of the rule to be \$4,577 (= 12 x \$76.29 [GS-14, step 5 rate] x 5 hours).

There are 893 GSA employees in the building manager, GS-1176, job series. GSA calculates it will take 893 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 0.5 hours each to develop awareness communication at the regional or local level for occupant agencies on the union organizer access policies once every 10 years. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be \$34,063 (= 893 x \$76.29 [GS-14, step 5 rate] x 0.5 hours).

GSA calculates it will take 1 GSA employee, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 0.25 hours to distribute the regional or local level awareness communication to occupant agencies on any changes to the union organizer access policies, estimated to occur once every 10 years. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be \$19 (1 x \$76.29 [GS-14, step 5 rate] x 0.25 hours).

There are 893 GSA employees in the building manager, GS-1176, job series. GSA calculates it will take 893 GSA

employees, on average with a GS-13, step 5, with an average hourly rate of \$64.56/hour, 0.25 hours each to distribute the regional or local level awareness communication to occupant agencies on the changes to the union organizer access policies once every 10 years, based on the prior estimation. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be **\$14,413 (= 893 x \$64.56 [GS-13, step 5 rate] x 0.25 hours) .**

GSA estimated the costs associated with Federal employees based on historical familiarization of headquarters, regional, and local level employees and subject matter expert judgment. Subject matter experts included GSA realty specialists and leasing contracting officers. GSA calculates it will take 10,000 Federal employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 0.5 hours each to receive and review the awareness communication on the union organizer rule once every 10 years, based on the prior estimation of changes to the policies occurring once each decade. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be **\$381,450 (= 10,000 x \$76.29 [GS-14, step 5 rate] x 0.5 hours) .**

### 3. Buildings Under Construction

GSA calculates it will take 8 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 30 hours each in the first year to develop awareness communication on the union organizer rule. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$18,310 (= 8 x \$76.29 [GS-14, step 5 rate] x 30 hours)**.

GSA calculates it will take 8 GSA employees, on average with a GS-14, step 5, with an average hourly rate of \$76.29/hour, 5 hours each to develop awareness communication as a building requirement on the union organizer access policies once every 10 years. Therefore, GSA calculated the total annual estimated cost for year 10 for this part of the rule to be **\$3,052 (= 8 x \$76.29 GS-14 Step 5 rate x 5 hours)**.

GSA calculates it will take 12 GSA employees, on average with a GS-15, step 5, with an average hourly rate of \$89.73/hour, 0.25 hours each to distribute the awareness communication as a building requirement on the union organizer access policies once every 10 years, based on the prior estimation. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be **\$269 (= 12 x \$89.73 [GS-15, step 5 rate] x 0.25 hours)**.

GSA assumes 3 GSA employees per large construction project and 1 GSA employee per small construction project

receiving and reading the communication, which totals to 5,846 GSA employees. GSA calculates it will take 5,846 GSA employees, on average with a GS-13, step 5, with an average hourly rate of \$64.56/hour, 0.25 hours each to receive and review the awareness communication as a building requirement on union organizer access policies once every 10 years, based on the prior estimation. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be **\$94,354 (= 5,846 x \$64.56 [GS-13, step 5 rate] x 0.25 hours).**

#### 4. Total Government Costs

GSA calculates the total government costs to be \$603,334 in the first year and \$549,931 in year 10. The table below shows total present value and annualized costs for 10 years.

SUMMARY	TOTAL COSTS
Present Value (3 percent)	\$994,961.48
Annualized Costs (3 percent)	\$116,639.84
Present Value (7 percent)	\$843,420.59
Annualized Costs (7 percent)	\$120,084.12

## B. Public Costs

### 1. Public Costs

Public costs associated with this rule include both large and small businesses managing buildings with ongoing



construction projects in or on GSA-controlled property. The GSA Office of Design and Construction estimated that there are 109 capital projects under construction. GSA assumes each large business operating a building under construction will have one employee receive and review the awareness communication. GSA calculates it will take 109 large business employees, on average with a GS-13, step 5, with an average hourly rate of \$64.56/hour, 0.25 hours to receive and review the awareness communication as a building requirement on the union organizer rule once every 10 years. GSA estimates the average hourly rate of \$64.56 for the large business employees as the private sector pay equivalent of a GS-13, step 5. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be **\$1,759 (= 109 x \$64.56 [GS-13, step 5 rate] x 0.25 hours)**.

GSA estimates an average of 5,519 small businesses operating a building under construction each year. GSA assumes each small business operating a building under construction will have one employee receive and review the awareness communication. GSA calculates it will take 5,519 small business employees, with an average hourly rate of \$64.56/hour, 0.25 hours to receive and review the awareness communication as a building requirement on the union organizer rule once every 10 years. GSA estimates the average hourly rate of \$64.56 for the small business

employees as the private sector pay equivalent of a GS-13, step 5. Therefore, GSA calculated the total annual estimated cost for year 1 and year 10 for this part of the rule to be \$89,077 (= 5,519 x \$64.56 [GS-13, step 5 rate] x 0.25 hours).

## 2. Overall Public Costs

GSA calculates the total undiscounted public costs related to buildings under construction to be \$90,836 over 10 years. The table below shows total present value and annualized costs for 10 years.

SUMMARY	TOTAL COSTS
Present Value (3 percent)	\$88,190.29
Annualized Costs (3 percent)	\$10,338.59
Present Value (7 percent)	\$84,893.46
Annualized Costs (7 percent)	\$12,086.92

## C. Overall Total Additional Costs

The overall total additional undiscounted cost of this final rule is estimated to be \$1,334,937 over a 10-year period. GSA did not identify any cost savings based on the impact of the rule.

## D. Analysis of Alternatives

The preferred alternative is the process laid out in the analysis above. However, GSA has analyzed two alternatives to the preferred process.

Alternative 1: GSA could decide to take no regulatory action and not allow exceptions for labor organizations representing or seeking to represent contractors working in GSA-controlled property to access the property. No action from the government would be required. Union organizers might still be able to access GSA-controlled property; however, they would have to have a Federal employee act as their host, depending on access rules for the specific building. This option would be inconsistent with the Task Force recommendation based on E.O. 14025, as it would mean that some buildings or worksites would be inaccessible to union organizers, thus denying workers opportunities to be informed of the benefits of unions and collective bargaining. As a result, GSA rejects this alternative.

Alternative 2: GSA could take limited regulatory action based on the policy direction of E.O. 14025 and the recommendation from the Task Force. Limited action from the government would be required, and would only be partially consistent with E.O. 14025 and the Task Force recommendation, and would only partially provide workers opportunities to be informed of the benefits of unions and collective bargaining. As a result, GSA rejects this alternative.

#### **VIII. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or

information collection requirements, or the collection of information from offerors, contractors or members of the public, that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

**List of Subjects in 41 CFR Part 102-74**

Government property management.

Robin Carnahan  
Administrator of General Services

For the reasons set forth in the Preamble, GSA amends  
41 CFR part 102-74 as set forth below:

**PART 102-74 - FACILITY MANAGEMENT**

1. The authority citation for 41 CFR part 102-74 is  
revised to read as follows:

**Authority:** 40 U.S.C. 121(c); E.O. 12191, 45 FR 7997, 3  
CFR, 1980 Comp., p 138; E.O. 14025, 86 FR 22829.

2. Amend § 102-74.410 by redesignating paragraphs (d)  
through (f) as paragraphs (e) through (g) and adding new  
paragraph (d) to read as follows:

**§ 102-74.410 What is the policy concerning soliciting,  
vending and debt collection?**

\* \* \* \* \*

(d) Labor organizations representing or seeking to  
represent contractors working in Federal Government  
facilities;

\* \* \* \* \*